

Amendments to House Bill No. 25
3rd Reading Copy

Requested by Senator Mitch Tropila

For the Senate Natural Resources and Energy Committee

Prepared by Sonja Lee
March 27, 2007 (9:52am)

1. Title, page 1, line 7.

Following: "~~PROVISIONS,~~"**Insert:** "CLARIFYING LEGISLATIVE FINDINGS AND POLICY PROVISIONS;"

2. Title, page 1, line 12.

Following: "~~69-8-102,~~"**Insert:** "69-8-102,"**Following:** "69-8-201,"**Insert:** "69-8-204, 69-8-208,"

3. Title, page 1, line 13.

Strike: "69-8-602, 69-8-603,"

4. Title, page 1, line 14.

Strike: "69-8-102,"**Strike:** "69-8-204, 69-8-208, 69-8-209,"

5. Title, page 1, line 15 through line 16.

Following: "~~69-8-403,~~"**Strike:** "69-8-404,"**Insert:** "AND"**Strike:** "69-8-409," through "69-8-410," on line 16

6. Page 2, line 3.

Strike: line 3 in its entirety**Insert:** "transmission facilities as that term is defined in 69-8-103."

7. Page 5, line 13.

Insert: "Section 6. Section 69-8-102, MCA, is amended to read:**"69-8-102. Legislative findings and policy.** The legislature finds and declares the following: that~~(1) The generation and sale of electricity is becoming a competitive industry.~~~~(2) Montana customers should have the freedom to choose their electricity supply and related services in accordance with this chapter. Affording this opportunity serves the public interest.~~~~(3) The interests of small Montana consumers must be protected through the provision of adequate and reliable default~~

~~supply service at the lowest long-term total cost.~~

~~(4) The financial integrity of electrical utilities must be fostered.~~

~~(5) The public interest requires the continued protection of consumers through:~~

~~(a) licensure of electricity suppliers;~~

~~(b) provision of information to consumers regarding electricity supply service;~~

~~(c) provision of a process for investigating and resolving complaints;~~

~~(d) continued funding for public purpose programs for:~~

~~(i) cost-effective local energy conservation;~~

~~(ii) low-income customer weatherization;~~

~~(iii) renewable resource projects and applications;~~

~~(iv) research and development programs related to energy conservation and renewables;~~

~~(v) market transformation; and~~

~~(vi) low-income energy assistance;~~

~~(e) assurance of service reliability and quality; and~~

~~(f) prevention of anticompetitive and abusive activities.~~

~~(6) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana."~~

~~{ Internal References to 69-8-102: None. }~~

Renumber: subsequent sections

8. Page 6.

Following: line 3

Insert: "(4) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load."

Renumber: subsequent subsections

9. Page 6, line 16.

Following: "FROM"

Insert: "a"

Strike: "FACILITIES"

Insert: "services provider"

Strike: "A RETAIL"

Insert: "the"

10. Page 6, line 17.

Strike: "UTILITY."

Insert: "distribution services provider."

(7) "Distribution services provider" means a utility owning distribution facilities for the distribution of electricity to

the public."

Renumber: subsequent subsections

11. Page 8, line 4.

Following: "means"

Strike: ", "

Insert: ": (a) except as provided in subsection (15)(b), a retail customer with an individual load greater than a monthly average of 50 kilowatt demand in the previous calendar year for that individual load; or
(b) "

Renumber: subsequent subsections

12. Page 8.

Following: line 6

Insert: "(16) "Licensed supplier" means an entity other than a public utility that is licensed by the commission in accordance with 69-8-404."

Renumber: subsequent subsections

13. Page 8, line 18.

Strike: "UTILITY'S"

Insert: "distribution services provider's"

14. Page 9.

Following: line 9

Insert: "(25) "Small customer" means a residential customer or a commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or a new residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter."

Renumber: subsequent subsections

15. Page 10, line 21 through line 22.

Strike: "AND THAT" through "UTILITY" on line 22

Following: line 22

Insert: "(33) "Transmission services provider" means an entity controlling or operating transmission facilities."

Renumber: subsequent subsections

16. Page 11, line 5 through page 14, line 7.

Strike: section 7 in its entirety

Insert: "Section 8. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility -- ~~transition to customer choice~~
~~-- options and requirements -- waiver exemption.~~ (1) Before July 1, 2027, all public utility customers of a public utility that has restructured in accordance with this chapter must have the opportunity to choose an electricity supplier other than the

~~default supplier.~~

~~(2) (a) A small customer of a public utility that has restructured in accordance with this chapter:~~

~~(i) must receive default supply services from the default supplier as provided in this chapter; and~~

~~(ii) may purchase electricity supply services through a commission-approved small customer electricity supply program as provided in this section.~~

~~(b) A small customer receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.~~

~~(c) Customers that represent separately metered services with an estimated average monthly demand of less than 50 kilowatts related to the same individual customer referred to in subsection (3) or (4) may be combined with the respective eligible customer load or loads.~~

~~(3) (a) Subject to subsection (3) (b), a customer of a public utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of less than 5,000 kilowatts but greater than or equal to 50 kilowatts may choose an electricity supplier.~~

~~(b) The total average monthly billing demand for all customers that choose an electricity supplier pursuant to subsection (3) (a) in each calendar year may not exceed 20,000 kilowatts.~~

~~(c) A customer referred to in subsection (3) (a) receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.~~

(1) (a) Except as provided in subsection (1) (b), a small customer of a public utility that has restructured in accordance with this chapter must receive electricity supply services from the public utility. Nothing in this section creates a right or an interest on the part of a public utility to provide electricity supply or continue to provide electricity supply to any small customer or customers if a licensed supplier submits an application to provide electricity supply to those small customers under subsection (5).

(b) A small customer receiving electricity from a licensed supplier pursuant to a small customer supply program authorized by the commission under subsection (5) may receive electricity supply in accordance with a commission order.

(2) (a) Subject to subsection (2) (b), a large customer that has an individual load with an average monthly demand of less than 5,000 kilowatts but greater than or equal to 50 kilowatts may choose to receive electricity supply from a licensed supplier.

(b) Unless the commission authorizes a greater amount consistent with subsection (5), the total average of monthly

billing demand for all large customers that choose an electricity supplier pursuant to subsection (2) (a) may not exceed 20,000 kilowatts each year or a total of 100,000 kilowatts in the aggregate.

(c) A large customer referred to in subsection (2) (a) that received electricity supply services from a licensed supplier prior to July 1, 2006, may continue to receive electricity supply from the licensed supplier and may not be included within the limits provided for in subsection (2) (b).

~~(4) (3) (a) Except as provided in subsections (4) (b) through (4) (e) subsections (3) (b) and (3) (c), a large customer of a utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts shall purchase its entire electricity supply from the competitive marketplace and that is not purchasing electricity from a public utility on [the effective date of this act] may not purchase electricity from a public utility.~~

~~(b) A customer referred to in subsection (4) (a) that is receiving its electricity supply from the competitive marketplace may make a one-time election to enter into a permanent power supply contract with the default supplier for service on or after July 1, 2004. These contracts must include the applicable provisions established by the commission pursuant to subsection (5). This election must be submitted to the commission in writing no later than December 31, 2003.~~

~~(c) (b) A new large customer with an estimated average monthly demand of greater than or equal to 5,000 kilowatts may enter into a power supply contract with the default supplier in order to receive default supply service referred to in subsection (3) (a) may request electricity from the public utility, and the public utility shall supply electricity to the customer if the provision of electricity supply service to the large customer will not adversely impact the public utility's other customers over the long term as determined by the commission. The new customer's election of an electricity supplier must be submitted in writing to the commission at least 90 days before delivery of electricity. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).~~

~~(d) A customer referred to in subsection (4) (a) that was receiving electricity from the default supplier on July 1, 2003, may continue to receive electricity from the default supplier.~~

~~(e) A customer referred to in subsection (4) (a) that is a public agency, as defined in 18-1-101, may enter into a power supply contract with the default supplier for default supply service for all or part of the public agency's load. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).~~

(c) If a public utility provides electricity supply service

to a large customer as provided in subsection (3)(b), that service is regulated by the commission and the customer may not, at a later date, purchase electricity supply service from another provider of electricity supply service.

~~(5) The commission shall adopt rules and establish rates and fees to enable customers to have reasonable opportunities to choose an electricity supplier or to receive default supply service in accordance with subsections (2) through (4), while providing protection for small customers from higher or more unstable default supply service rates than would otherwise result if these choices were not offered.~~

~~(6) An electricity supplier licensed by the commission to offer electricity supply service to small customers may petition the commission for the opportunity to provide electricity to small customers. The total average monthly demand for all customers referred to in subsection (2)(a) in each calendar year that receive service from an electricity supplier that is not the default supplier may not exceed 10,000 kilowatts. The commission shall ensure that electricity supply service provided pursuant to this subsection is consistent with the requirements in subsection (5) and the provision of default supply service pursuant to this chapter.~~

~~(7) Based on an analysis of the sources of costs of providing default supply service, the commission may:~~

~~(a) establish different categories of default supply service customers to assist with the implementation of this section;~~

~~(b) allocate default supply costs; and~~

~~(c) develop default supply rates.~~

~~(8) (a) Except as provided in subsection (8)(b), a customer receiving default supply service may not resell the electricity.~~

~~(b) A default supplier may implement demand reduction programs that reward customers for reducing demand under terms established by the commission.~~

(4) The commission shall adopt rules and establish rates and fees to enable customers to have reasonable opportunities to choose an electricity supplier or to receive electricity supply service from a public utility in accordance with subsections (1) through (3) while providing protection for small customers from higher or more unstable electricity supply service rates than would otherwise result if these choices were not offered.

(5) An electricity supplier licensed by the commission to offer electricity supply service to small customers may petition the commission for the authority to provide electricity supply service to small customers. The average monthly demand of all small customers authorized by the commission to receive electricity service from a licensed supplier under this subsection may not exceed 40,000 kilowatts. In authorizing electricity supply service under this subsection, the commission shall establish such terms and conditions as may be necessary to

allow the licensed supplier to make long-term investments in supply resources. The commission shall ensure that electricity supply service provided pursuant to this subsection is consistent with the requirements in subsection (4).

(6) Nothing in this section affects a customer's rights and obligations with respect to net metering, cogeneration, self-generation, or ancillary sales of electricity related to deviations from scheduled energy deliveries from nonutility suppliers as may be provided for in law, commission rule or order, or a tariff approved by the public service commission or the federal energy regulatory commission.

~~(9)~~ (7) (a) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, and subsection (7)(b) of this section, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory is exempt from the requirements of this chapter.

(b) To the extent that a public utility described in subsection ~~(9)(a)~~ (7)(a) becomes the successor in interest of another public utility that has restructured in accordance with this chapter before [the effective date of this act], it shall assume responsibility only for the applicable transition plan of it is subject to the requirements of this chapter with respect to the service area of the acquired public utility.

~~(10) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."~~

~~{ Internal References to 69-8-201:~~

~~69-8-104R 69-8-202R 69-8-210A}~~

Insert: "Section 9. Section 69-8-204, MCA, is amended to read:

"69-8-204. Public utility -- functional separation, divestiture, and nondiscrimination. (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission, retail distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

~~(2)~~(1) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail

transmission and distribution system by the public utility and the public utility's affiliates.

~~(3)~~(2) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with the federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37, and commission rules and orders."

{Internal References to 69-8-204:
69-8-201A}"

Insert: "Section 10. Section 69-8-208, MCA, is amended to read:

"69-8-208. Public utility -- distribution services. A public utility's ~~distribution services provider utility~~ shall:

(1) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(2) build and maintain distribution facilities; and

~~(3) provide default supply service; and~~

~~(4)~~(3) provide or contract for emergency electricity supply and related services."

{Internal References to 69-8-208:
69-8-201* 69-8-408}"

17. Page 14.

Following: line 25

Insert: "(3) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

18. Page 15, line 17, through page 16, line 15.

Strike: section 10 in its entirety

Insert: "Section 13. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission authority -- rulemaking authority.

(1) ~~Beginning on the effective date of a commission order regarding a public utility's transition plan, the~~ The commission shall regulate the public utility's retail transmission, distribution, and ~~default~~ electricity supply services within the state of Montana, as provided in this chapter.

(2) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

(3) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(4) The commission shall establish just and reasonable rates through established ratemaking principles for public utility ~~default~~ electricity supply, distribution, and transmission services and shall regulate these services. The commission may approve rates and charges for those services based

on alternative forms of ratemaking, such as performance-based ratemaking, and on a demonstration by the public utility that the alternative method complies with this chapter, ~~and on the public utility's transition plan.~~

~~(5) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.~~

~~(6)~~ (5) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(7) (a) After July 1, 2010, the commission shall continuously monitor whether or not workable competition has developed for small customers.~~

~~(b) If the commission determines that workable competition has developed for small customers after July 1, 2010, the commission shall provide a report to the legislature that includes recommendations for legislative implementation of customer choice for small customers.~~

~~(8)~~ (6) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision provisions of this chapter.

~~(9) This chapter does not give the commission the authority to:~~

~~(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter, or~~

~~(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."~~

~~{ Internal References to 69-8-403: None. }~~

Renumber: subsequent sections

19. Page 16, line 26.

Strike: "and (2)"

Insert: "through (3)"

20. Page 16, line 27.

Strike: "and (2)"

Insert: "through (3)"

21. Page 21, line 11 through page 22, line 17.

Strike: section 15 through section 16 in their entirety

Renumber: subsequent sections

22. Page 24, line 30.

Strike: "18"

Insert: "19"

23. Page 25, line 1.

Strike: "18"

Insert: "19"

24. Page 25, line 4.

Strike: "69-8-102,"

Strike: "69-8-204,"

25. Page 25, line 5.

Strike: "69-8-208, 69-8-209,"

26. Page 25, line 6.

Strike: "69-8-404,"

Insert: "and"

Strike: "69-8-409, AND 69-8-410,"

- END -